

ASSEMBLY BILL

No. 667

Introduced by Assembly Member Wagner

February 24, 2015

An act to amend Section 25004 of the Corporations Code, relating to securities.

LEGISLATIVE COUNSEL'S DIGEST

AB 667, as introduced, Wagner. Broker-dealers: finders.

Under existing law, the Corporate Securities Law of 1968, the Commissioner of Business Oversight regulates the activities of a broker-dealer which is defined as, among other things, any person engaged in the business of effecting securities transactions in California for the account of others or his or her own account, and it specifies those persons or entities excluded from the definition.

This bill would add to the persons excluded from the definition of a broker-dealer an individual who is a finder, as defined, who satisfied specified requirements, including, among other things, filing an initial statement of information with the Department of Business Oversight and paying a filing fee.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25004 of the Corporations Code is
- 2 amended to read:
- 3 25004. (a) "Broker-dealer" means any person engaged in the
- 4 business of effecting transactions in securities in this state for the

1 account of others or for his *or her* own account. “Broker-dealer”
2 also includes a person engaged in the regular business of issuing
3 or guaranteeing options with regard to securities not of his *or her*
4 own issue. “Broker-dealer” does not include any of the following:

- 5 (1) Any other issuer.
- 6 (2) An agent, when an employee of a broker-dealer or issuer.
- 7 (3) A bank, trust company, or savings and loan association.
- 8 (4) Any person insofar as he *or she* buys or sells securities for
9 his *or her* own account, either individually or in some fiduciary
10 capacity, but not as part of a regular business.

11 (5) A person who has no place of business in this state if he *or*
12 *she* effects transactions in this state exclusively with (A) the issuers
13 of the securities involved in the transactions or (B) other
14 broker-dealers.

15 (6) A broker licensed by the Real Estate Commissioner of this
16 state when engaged in transactions in securities exempted by
17 subdivision (f) or (p) of Section 25100 or in securities the issuance
18 of which is subject to authorization by the Real Estate
19 Commissioner of this state or in transactions exempted by
20 subdivision (e) of Section 25102.

21 (7) An exchange certified by the ~~Commissioner of Corporations~~
22 *Commissioner* pursuant to this section when it is issuing or
23 guaranteeing options. The commissioner may by order certify an
24 exchange under this section upon ~~such~~ any conditions as he *or she*
25 by rule or order deems appropriate, and upon notice and
26 opportunity to be heard he *or she* may suspend or revoke ~~such that~~
27 certification, if he *or she* finds ~~such~~ the certification, suspension,
28 or revocation to be in the public interest and necessary and
29 appropriate for the protection of investors.

30 (8) (A) *Any finder who satisfies all of the conditions set forth*
31 *in subparagraphs (B) to (E), inclusive. For purposes of this section,*
32 *a “finder” is a natural person who, for direct or indirect*
33 *compensation, introduces or refers one or more accredited*
34 *investors, as that term is defined in Rule 501(a) of Regulation D*
35 *under the Securities Act of 1933 (17 C.F.R. 230.501(a)), to an*
36 *issuer or an issuer to one or more accredited investors, solely for*
37 *the purpose of a potential offer or sale of securities of the issuer*
38 *in an issuer transaction in this state, and who does not do any of*
39 *the following:*

1 (i) Provide services to an issuer for a transaction or a series of
2 related transactions for the offer or sale of securities of the issuer
3 that exceeds a securities purchase price of twenty-five million
4 dollars (\$25,000,000) in the aggregate.

5 (ii) Participate in negotiating any of the terms of the offer or
6 sale of the securities.

7 (iii) Advise any party to the transaction regarding the value of
8 the securities or the advisability of investing in, purchasing, or
9 selling the securities.

10 (iv) Conduct any due diligence on the part of any party to the
11 transaction.

12 (v) Sell or offer for sale in connection with the issuer transaction
13 any securities of the issuer that are owned, directly or indirectly,
14 by the finder.

15 (vi) Receive, directly or indirectly, possession or custody of any
16 funds in connection with the issuer transaction.

17 (vii) Knowingly receive compensation in connection with any
18 offer or sale of securities unless the sale is qualified under this
19 division or unless the security or the transaction is exempt or not
20 otherwise subject to qualification.

21 (viii) Make any disclosure to a potential purchaser other than
22 the following:

23 (I) The name, address, and contact information of the issuer.

24 (II) The name, type, price, and aggregate amount of any
25 securities being offered in the issuer transaction.

26 (III) The issuer's industry, location, and years in business.

27 (B) (i) The finder shall file with the Department of Business
28 Oversight before engaging in any activities described in
29 subparagraph (A), on a form prescribed by the commissioner, an
30 initial statement of information that shall include both of the
31 following:

32 (I) The name and complete business or residential address of
33 the finder.

34 (II) The mailing address of the finder, if different from the
35 business or residential address.

36 (ii) A filing fee of not more than three hundred dollars (\$300)
37 may be required to be submitted, as determined by the
38 commissioner by rule, to the Department of Business Oversight
39 along with the initial statement of information required by this
40 subparagraph.

1 (C) (i) For each issuer transaction, the finder shall file with
2 the Department of Business Oversight, on a form prescribed by
3 the commissioner, a notice that shall include all of the following:

4 (I) The following affirmative representations by the finder:

5 (ia) The finder has complied and will continue to comply with
6 the provisions of subparagraph (A).

7 (ib) The finder has not performed any acts or satisfied any
8 circumstances prohibited by Section 25212, nor been sanctioned
9 by the commissioner pursuant to Section 25212.

10 (ic) The finder has obtained the written agreement described
11 in subparagraph (D).

12 (II) An indication by the finder as to whether the finder is
13 receiving transaction-based compensation that is subject to the
14 actual sale of securities by the issuer in the transaction.

15 (ii) A separate notice shall be filed for each new issuer
16 transaction, no later than 20 business days following the first sale
17 of securities. The commissioner may by rule require the finder to
18 pay a filing fee in connection with the notice required in this
19 subparagraph of up to fifty dollars (\$50).

20 (D) (i) Concurrently with each introduction, the finder shall
21 obtain the informed, written consent of each person introduced or
22 referred by the finder to an issuer, in a written agreement signed
23 by the finder, the issuer, and the person introduced or referred,
24 disclosing the following:

25 (I) The type and amount of compensation that has been or will
26 be paid to the finder in connection with the introduction or referral
27 and the conditions for payment of that compensation.

28 (II) That the finder is not providing advice to the issuer or any
29 person introduced or referred by the finder to an issuer as to the
30 value of the securities or as to the advisability of investing in,
31 purchasing, or selling the securities.

32 (III) Whether the finder is also an owner, directly or indirectly,
33 of the securities being offered or sold.

34 (IV) Any actual and potential conflict of interest in connection
35 with the finder's activities related to the issuer transaction.

36 (V) That the parties to the agreement shall have the right to
37 pursue any available remedies at law or otherwise for any breach
38 of the agreement.

39 (ii) To satisfy the requirements of this subparagraph, the
40 agreement shall also include a representation by the person

1 *introduced or referred by the finder to the issuer that the person*
2 *is an accredited investor, as that term is defined in Rule 501(a) of*
3 *Regulation D under the Securities Exchange Act of 1933 (17 C.F.R.*
4 *230.501(a)), and that the person knowingly consents to the payment*
5 *of the compensation described therein.*

6 *(E) The finder shall maintain and preserve, for a period of five*
7 *years from the date of filing of the notice prescribed in*
8 *subparagraph (C), a copy of the notice, the written agreement*
9 *required in subparagraph (D), and all other records relating to*
10 *any offer or sale of securities in connection with which the finder*
11 *receives compensation, as the commissioner may by rule require.*
12 *The finder, upon written request of the commissioner, shall furnish*
13 *to the commissioner any records required to be maintained and*
14 *preserved under this subparagraph.*

15 *(F) (i) A natural person who does not meet the definition of*
16 *“finder” set forth in subparagraph (A) and does not satisfy all the*
17 *conditions set forth in subparagraphs (B) to (E), inclusive, may*
18 *be determined to be a broker-dealer by the commissioner.*

19 *(ii) In the event a natural person does not meet the definition*
20 *of “finder” set forth in subparagraph (A) and does not satisfy all*
21 *the conditions set forth in subparagraphs (B) to (E), inclusive, any*
22 *person introduced or referred by that natural person to an issuer,*
23 *who purchases securities of that issuer in an issuer transaction*
24 *following that introduction or referral, shall have the right to*
25 *pursue any applicable remedy afforded under state law, including,*
26 *without limitation, any applicable remedies pursuant to Section*
27 *25501.5.*

28 *(b) For purposes of this section, an agent is an employee of a*
29 *broker-dealer under paragraph (2) of subdivision (a) when the*
30 *agent is employed by or associated with the broker-dealer under*
31 *all of the following conditions:*

32 *(1) The agent is subject to the supervision and control of the*
33 *broker-dealer.*

34 *(2) The agent performs under the name, authority, and marketing*
35 *policies of the broker-dealer.*

36 *(3) The agent discloses to investors the identity of the*
37 *broker-dealer.*

- 1 (4) The agent is reported pursuant to subdivision (c) of Section
- 2 25210 and the rules adopted thereunder.

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